

MYLES STEPHENSON

IBLA 74-217

Decided July 22, 1974

Appeal from decision of the New Mexico State Office dismissing protest to color of title application, NM 17865 (Okla.).

Affirmed.

Color or Claim of Title: Generally – Withdrawals and Reservations: Effect of

Where a valid class 1 color of title claim has been initiated before the withdrawal of lands involved, the withdrawal will not preclude the perfecting of the claim.

APPEARANCES: Mles Stephenson, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Myles Stephenson, Chairman of the Wichita Tribe of Indians, has appealed from the January 17, 1974, decision of the New Mexico State Office, Bureau of Land Management (BLM), which rejected his protest to a class 1 color of title claim filed by Rex Branson pursuant to the Color of Title Act, as amended, 43 U.S.C. § 1068 (1970). 1/ The

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1/ The distinction between a class 1 and class 2 claim under the Color of Title Act is contained in 43 CFR 2540.0-5(b):

"The claims recognized by the act will be referred to in this part as claims of class 1, and claim of class 2. A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse pos-

application was filed on January 11, 1973, for lots 1 and 2, Section 17, T. 14 N., R. 13 W., I.M., Blaine County, Oklahoma. The protest filed by appellant is based on his assertion that the Wichita Tribe of Indians has a claim to the same lands, since these lands were temporarily withdrawn by Departmental Order of September 19, 1934, 54 I.D. 559 (1934), for consideration of whether they should be restored to tribal ownership. The withdrawal was later revoked by PLO 4502, July 22, 1968.

However, the New Mexico State Office noted that Branson's claim is based upon a chain of title which was initiated by September 8, 1934, prior to the withdrawal of the lands. Appellant argues that if Branson had a valid claim there would have been no need to revoke the withdrawal. Consequently, he argues, the revocation of the withdrawal was a recognition by the Department of the validity of appellant's claim.

There was no need to revoke the withdrawal of these lands in order for Branson to obtain patent. The Department has held that a withdrawal does not prevent the patenting of a class 1 color of title claim, if the claim was initiated before the withdrawal. Clement Vincent Tillion, Jr., A-29277 (April 12, 1963); cf. Asa V. Perkes, 9 IBLA 363, 368 (1973). However, there is no evidence in the record to indicate any connection between the revocation of the withdrawal and Branson's application for patent; Branson's application was not filed until more than 4 years after the revocation of the withdrawal. Neither has appellant submitted any evidence that would tend to support such a connection; nor was the revocation in any way indicative of a recognition of the claim of the Wichita Tribe. On the contrary, the revocation indicates that the Government had decided not to convey this land to the Tribe, so that the land no longer needed the continuing protection of the withdrawal. Since Branson would be entitled to patent whether or not the withdrawal had been revoked, we conclude that the New Mexico State Office correctly dismissed the protest.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

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(Fn. 1 Cont.)

session where it was initiated while the land was withdrawn or reserved for Federal purposes."

The issuance of patent to a qualified class 1 claimant is mandatory.  
43 CFR 2541.3.

We concur.

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Frederick Fishman  
Administrative Judge

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Newton Frishberg  
Chief Administrative Judge

